

## § 1930.106

VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Executive Order 11246, the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975.

(11) Maintain facilities and premises that are free of illegal controlled substances.

(12) Collect and remit any occupancy surcharges as applicable.

[58 FR 40868, July 30, 1993, as amended at 62 FR 25065, May 7, 1997]

### § 1930.106 Project operations.

Project operations shall be conducted to meet the actual needs and necessary expenses of the property or for any other purpose authorized under Agency regulations. Whoever willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other funds derived from such property for unauthorized purposes is subject to penalty. This includes an owner, agent, or manager, or person who is otherwise in custody, control, or possession of property that is security for a multi-family housing loan. Those violating these provisions are subject to penalties set out under Agency regulations and the law. Under law (42 U.S.C. 1484 and 1485) federal penalties consisting of fines of not more than \$250,000 or imprisonment of not more than five years, or both, may be imposed for operating a project in a manner inconsistent with the provisions of this section.

[62 FR 25065, May 7, 1997]

### § 1930.107 [Reserved]

### § 1930.108 Extent of borrower management.

According to exhibit B of this subpart, the borrower and/or the borrower's agent will develop a management plan for each project that describes the scope of property management needed to maintain program objectives. When the management is from other than the borrower, a management agreement will be used to define the responsibilities of the management agent. Initial, modified and/or replacement management agreements will be approved by authorized FmHA or its successor agency under Public Law 103-354 officials. A sample management

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agreement is provided in exhibit B-3 of this subpart.

### § 1930.109 Extent of FmHA or its successor agency under Public Law 103-354 supervision.

The objective of FmHA or its successor agency under Public Law 103-354 supervision is to guide and advise borrowers and their designated representatives in their quest to meet MFH program objectives, goals, and obligations, not to direct the borrower's activity. Supervision does not relieve borrowers of their own responsibilities and obligations. Supervision starts with the first contact by the applicant and continues as long as any loan balance remains outstanding. In the case of a grant, supervision continues until the requirements of the grant agreement have been fulfilled. Supervision of borrowers is a primary responsibility of the Servicing Official; however, additional supervision and guidance will be given by the State Director and/or other appropriate members of the State Office staff. Security servicing actions will be handled according to subpart B of part 1965 of this chapter.

### § 1930.110 Methods of supervision.

Supervisory methods used by FmHA or its successor agency under Public Law 103-354 employees include organizational and development planning; property management planning; affirmative marketing; construction conferences; long-term, annual, and other periodic planning and evaluation; accounts, budgets, and records inspections and guidance; project inspections; attendance at membership and governing body meetings; periodic group meetings with borrowers; analysis of accounting, budgets, and audit reports; guidance by memorandums; and similar activities. Supervision of cooperative borrowers will include coordination with the adviser to the board. Supervision of grant-only recipients will consist of at least the reviews and inspections outlined in § 1930.119 of this subpart.

(a) *Applicants.* Prior to loan or grant closing, supervision will largely be conducted during conferences and meetings with prospective borrowers and their various representatives such as

applicant's attorney, architect, property manager, etc. Examples of supervision include:

(1) Organizational meetings to discuss needs, services available, owner obligations, and to establish organizational committees.

(2) Preapplication and application conferences.

(3) Preconstruction conferences to reach an understanding regarding responsibilities and the manner in which development will be performed. The applicant at this point should be made fully aware of the responsibilities detailed in § 1930.103 of this subpart.

(4) Preloan and/or grant closing conferences to review requirements of the loan resolution or agreement, closing requirements, and management plan and to establish responsibilities for the operation of the project. The applicant at this point should be made fully aware of the responsibilities entailed in § 1930.103 of this subpart.

(5) Preoccupancy conferences to review the management plan, marketing plan, and the general readiness of project facilities, recordkeeping systems, renting or occupancy procedures, and personnel assignments to begin project operation. This conference will be conducted according to § 1944.235(h) of subpart E of part 1944 of this chapter.

(b) *Borrowers who have yet to demonstrate their ability and borrowers with problems.* When the borrower is establishing its operations, or when borrowers are delinquent, or have other difficulties, supervisory guidance will include:

(1) Implementation and/or review for compliance with the management plan.

(2) Establishment and maintenance of a financial recordkeeping and reporting system.

(3) Compliance with the requirements of the loan agreement or loan resolution.

(4) Review of annual audit and budget requirements.

(5) Any other supervision that may be necessary to assure effective and successful operation of the project.

(6) A requirement that the borrower contract with a management firm with proven background and/or experience in property management. In the case of

cooperative housing, this stipulation will apply only when it has been determined that the cooperative is unable to manage itself.

(c) *Borrowers who have demonstrated ability.* Supervision will consist of at least an annual review of budgets and other management reports according to § 1930.122, and a triennial supervisory visit according to § 1930.119 of this subpart when the borrower is:

(1) Successful in completing a first full fiscal year of operation.

(2) Current with loan payments.

(3) In compliance with other loan or grant requirements.

(4) Maintaining the security in a satisfactory manner.

(5) Otherwise progressing satisfactorily.

#### §§ 1930.111–1930.112 [Reserved]

#### § 1930.113 Borrower responsibilities.

Borrower responsibilities are described in paragraph III of exhibit B of this subpart.

#### §§ 1930.114–1930.116 [Reserved]

#### § 1930.117 Agency responsibilities.

Effective supervision requires FmHA or its successor agency under Public Law 103-354 employees to be familiar with the various types of borrowers and their management plan; to communicate effectively with borrowers and their management agent, when applicable; and to provide guidance in the operation and management of MFH projects.

(a) *Servicing Official.* Servicing Officials are responsible for effective borrower supervision. Servicing Officials will:

(1) Organize their work and the work of their staffs in order that time is used effectively in providing borrower supervision and place emphasis on supervisory visits and review of borrower management reports.

(2) Emphasize to the borrower and/or the borrower's management agent that they, not FmHA or its successor agency under Public Law 103-354, are responsible for managing the project, planning and following budgets within acceptable tolerance, collecting rents or occupancy charges, repaying the